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W.P. No. 35011 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 35011 of 2023

Tagore Educational Society
Rep. by its Secretary
No. 29388E, Gingee Road
Tindivanam – 604 001
Villupuram District.

... Petitioner

-VS-

1. The State of Tamil Nadu
Rep. by its Principal Secretary
Department of School Education
Fort St. George, Chennai-600 009.
2. The Director of Elementary Education
College Road, Chennai – 600 006.
3. The Chief Educational Officer
Villupuram – 605 602.
4. The District Educational Officer
Tindivanam – 604 001
Villupuram District.
5. The Block Educational Officer
Olakkur Range @ Saram
Tindivanam, Villupuram District-604 307.
6. The District Collector
Office of the District Collector
Villupuram District – 605 602.



W.P. No. 35011 of 2023

7. The Commissioner
Tindivanam Municipality
Tindivanam, Villupuram District-604001.

8. The Tahsildar
Tindivanam Taluk Office
Tindivanam – 604 001.

Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing Respondents 6 to 8 to process the Petitioner's application dated 14.09.2021 together with reminders dated 05.09.2022 and 05.06.2023 and give the licence in Form D under the Tamil Nadu Public Building (Licensing) Act, 1986 for the building in Door No.337 in Nehru Street, of the Petitioner T.S. No. 38/1066, Kidangal I, Tindivanam Taluk, Villupuram District to run the Muslim Aided Middle School.

For Petitioner : Mr. Godson Swaminathan
For M/s. Isaac Chambers

For Respondents : Mr. U.Baranidharan, AGP (R7)
Mr. S.J.Mohamed Sathik, GA
(RR1 to 6 & 8)

ORDER

Heard Mr. Godson Swaminathan, Learned Counsel for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First to Sixth and Eighth Respondents and Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the Seventh Respondent and



W.P. No. 35011 of 2023

perused the materials placed on record, apart from the pleadings of the parties.

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2. It is the case of the Petitioner, which is a society registered under Tamil Nadu Societies Registration Act, 1975, that it had made an application dated 14.09.2021 for issuance of licence in Form – D in terms of Section 6(1) of the Tamil Nadu Public Building (Licensing) Act, 1965 (hereinafter referred to as 'the Act' for short) read with Rule 6 of the Tamil Nadu Public Building (Licensing) Rules, 1966 (hereinafter referred to as 'the Rules' for short) in respect of the building to be used as a 'school' by it at Door No.337, Nehru Street, T.S. No. 38/1066, Kidangal I, Tindivanam Taluk, Villupuram District, but despite reminders dated 05.09.2022 and 05.06.2023, it did not evoke any response, which has necessitated the filing of this Writ Petition.

3. Learned Additional Government Pleader appearing for the Respondents, on instructions, states that the owner of the land where the aforesaid school of the Petitioner is situated, had already made a representation dated 10.07.2021 objecting to the continuance of the school in that premises and that the education department has already issued a notice to the school authorities to shift it from the existing place as the building is not in usable condition by Proceedings in Na.Ka. No. 308/A2/2022 dated 02.09.2022, which has been



W.P. No. 35011 of 2023

recorded in the order dated 09.09.2022 in the Writ Petition in W.P. No. 24509

of 2022 passed by this Court. It is further informed that the Petitioner is adopting delaying tactics for shifting the school, which is presently in a building which is in a dilapidated condition for which licence cannot be granted, taking into consideration the safety of the children.

4. It is evident that the nature of relief claimed by the Petitioner falls within the realm of disputed questions of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following summary procedure. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in **Roshina T. -vs- Abdul Azeez K.T.** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the jurisdictional civil court.

5. At this juncture, it would be beneficial to refer to the decision of the Hon'ble Supreme Court of India in **Director of Settlements, A.P. -vs- M.R. Apparao** [(2002) 4 SCC 638], which reads as follows:-

17.One of the conditions for exercising power under Article 226 for



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issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition* (**Kalyan Singh v. State of U.P.** [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law....

In view of the aforesaid legal position, when the Petitioner has not made out any clear right to seek the relief claimed from the Respondents, it is not possible for this Court to entertain this Writ Petition to delve into the merits of the controversy involved.

6. It is needless to clarify here that nothing said in this order shall be



W.P. No. 35011 of 2023

construed as creating any fetter on the powers of the concerned authorities under the relevant statutory provisions from independently considering the matter with reference to the materials borne out of the record on its own merits and in accordance with law.

In the result, the Writ Petition is dismissed with the aforesaid observations. No costs.

22.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya

To

1. The Principal Secretary
Department of School Education
Fort St. George, Chennai-600 009.
2. The Director of Elementary Education
College Road, Chennai – 600 006.
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WEB COPY



W.P. No. 35011 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 35011 of 2023

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